

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ALASKA GROWTH CAPITAL
BIDCO, INC.,

Plaintiff,

vs.

BROOKSIDE WOOLEN MILL, a
Montana partnership; THAYNE
MACKEY, INC., a Montana
corporation; MICHELLE MACKEY,
INC., a Montana corporation; TCJ I,
LLC, a Delaware limited liability
company; THAYNE A. MACKEY, an
individual; and MICHELLE L.
MACKEY, an individual,

Defendants.

CV 20-23-GF-BMM

**DEFAULT JUDGMENT,
DECREE OF FORECLOSURE
AND ORDER OF SALE**

Presently before the Court is Plaintiff's Motion for Entry of Default Judgment under Fed. R. Civ. P. 55. Plaintiff seeks a default judgment against all of the Defendants, a decree of foreclosure, and an order of sale. The motion is supported by a brief (Doc. 14), the Declaration of Ben Kappelman (Doc. 16), the Declaration of Michael Rzeszut (Doc. 17), and the Default Certificate entered by the Clerk of Court on June 9, 2020. (Doc. 12). No Defendant has filed a brief in opposition to the motion.

FINDINGS OF FACT

1. This Court possesses subject matter jurisdiction over this action under 28 U.S.C. § 1332. Complete diversity of citizenship exists between the Plaintiff and the Defendants. The amount in controversy exceeds \$75,000, exclusive of interests and costs. Venue is proper given that the real property at issue in this action is located in Phillips County, Montana.

2. Plaintiff loaned Defendant Brookside Woolen Mill (Brookside) the sum of \$650,000 on or about August 13, 2013, pursuant to a business loan agreement. Brookside executed a promissory note and a commercial security agreement in favor of Plaintiff in exchange for the loan. The commercial security agreement granted Plaintiff a first priority security interest in certain personal property described in the security agreement (the Personal Property Collateral). Plaintiff perfected its interest in the Personal Property Collateral by filing two UCC-1 financing statements with Montana's Secretary of State on August 27, 2013, and on February 11, 2014. Copies of the loan agreement, promissory note, security agreement, and UCC-1 financing statements are attached to the Complaint as Documents 1-1, 1-2, 1-3, 1-4 and 1-5.

3. Defendants Michelle Mackey, Inc., Michelle L. Mackey, Thayne Mackey, Inc. and Thayne A. Mackey each executed an unconditional

guarantee in connection with the loan. A copy of the guarantees are attached to the Complaint as Documents 1-6, 1-7, 1-8 and 1-9.

4. Thayne A. Mackey (individually) executed two mortgages on August 13, 2013, as security for the promissory note. The first mortgage related to real property located at 47464 U.S. Highway 2, in Malta, Montana 59538. The mortgage is referred to herein as the 47464 mortgage. The mortgage was recorded in Phillips County, Montana on August 14, 2013, in Book 57 of Documents, at pages 329-343, as Instrument No. 346129.

The second mortgage related to certain real property located at 47466 U.S. Highway 2 in Malta, Montana 59538. The mortgage is referred to herein as the 47466 mortgage. The mortgage was recorded in Phillips County, Montana on August 14, 2013, in Book 57 of Documents, at pages 298-313, as Instrument No. 346127. Copies of these two mortgages are attached to the Complaint as Documents 1-10 and 1-11.

5. Thayne A. Mackey and Michelle L. Mackey (jointly) executed a mortgage as security for the promissory note. The mortgage related to real property located at 3493 Old U.S. Highway 2 in Malta, Montana 59538. The mortgage is referred to herein as the 3493 mortgage. The mortgage was recorded in Phillips County, Montana on December 24, 2015, in Book 67 of Documents, at

pages 272-286, as Instrument No. 349368.

6. Brookside is in default under the terms of the loan agreement and promissory note due to the failure to make payments of principal and interest as agreed.

7. As of July 21, 2020, Brookside was indebted to Plaintiff for the loan described above in the amount of \$838,055.02. This amount consists of principal in the amount of \$597,228.85, interest in the amount of \$186,670.86, late fees in the amount of \$15,640.68, lender fees and costs in the amount of \$7,697.40, and attorneys' fees and costs in the amount of \$30,817.23. Interest continues to accrue from July 21, 2020, at the rate of \$99.54 per day until the date judgment is entered. Plaintiff also seeks post-judgment interest, costs and attorneys' fees from Brookside as allowed under the loan documents.

8. As of July 21, 2020, Michelle Mackey, Inc., Thayne Mackey, Inc., Michelle Mackey and Thayne Mackey owed Plaintiff the total amount of \$838,055.02 under the guarantees described above. Interest continues to accrue from July 21, 2020, at the rate of \$99.54 per day until the date judgment is entered. Plaintiff also seeks post-judgment interest, costs and attorneys' fees from Defendants Michelle Mackey, Inc., Thayne Mackey, Inc., Michelle Mackey and Thayne Mackey as allowed under the loan documents.

9. The real property located at 47466 U.S. Highway 2, Malta, Montana 59538 (the 47466 Property) has the following legal description:

Tracts 4, 5 and the Remainder Tract of the O Bar Land Subdivision, Phillips County, Montana, according to the official plat thereof, filed as Plat No. 110A.

EXCLUDING Tract 3A of the O Bar Land Subdivision, Phillips County, Montana, according to the official recorded plat thereof, filed as Amended Plat No. 110B.

Plaintiff's interest in the 47466 Property is prior, senior and superior to the interests of each Defendant in the 47466 Property, as well as the liens or interests of all other persons or entities in the 47466 Property recorded subsequent to the recording of the Plaintiff's Lis Pendens in Phillips County, Montana, on April 7, 2020 in Book 87 of Documents, at pages 317-334, as Instrument No. 355912 (the 47466 Lis Pendens).

10. The real property located at 47464 U.S. Highway 2, Malta, Montana 59538 (the 47464 Property) has the following legal description:

Tract 3A of the O Bar Land Subdivision, Phillips County, Montana, according to the official plat thereof, filed as Amended Plat No. 1110B.

Plaintiff's interest in the 47464 Property is prior, senior and superior to the interests of each Defendant in the 47464 Property, as well as the liens or interests of all other persons or entities in the 47464 Property recorded subsequent to the

recording of Plaintiff's Lis Pendens in Phillips County, Montana, on April 7, 2020 in Book 87 of Documents, at pages 335-351, as Instrument No. 355913 (the 47464 Lis Pendens).

11. The real property located at 3493 Old U.S. Highway 2, Malta, Montana 59538 (the 3493 Property) has the following legal description:

Simanton Subdivision, Phillips County, Montana, being a tract of land in the SE1/4 of Section 12, Township 30 North, Range 30 East, according to the official plat thereof, filed as Plat #140.

Plaintiff's interest in the 3493 Property is prior, senior and superior to the interests of each Defendant in the 3493 Property, as well as the liens or interests of all other persons or entities in the 3493 Property recorded subsequent to the recording of the Plaintiff's Lis Pendens in Phillips County, Montana, on April 7, 2020 in Book 87 of Documents, at pages 300-316, as Instrument No. 355911 (the 3493 Lis Pendens).

12. Plaintiff's interest in the Personal Property Collateral is prior, senior and superior to the interests of each Defendant in the Personal Property Collateral, except the interests of TCJ I, LLC.

13. Plaintiff filed its Complaint in this action on March 26, 2020. (Doc. 1).

14. Plaintiff served Defendant TCJ I, LLC with a copy of the Summons

and Complaint on April 7, 2020, via service on TCJ I, LLC's registered agent Corporation Service Company. (Doc. 4).

15. Plaintiff served Defendant Brookside with a copy of the Summons and Complaint on April 9, 2020, via service on Brookside's registered agent Thayne Mackey. (Doc. 5).

16. Plaintiff served Defendant Michelle Mackey, Inc. with a copy of the Summons and Complaint on April 9, 2020, via service on Michelle Mackey, Inc.'s registered agent Michelle Mackey. (Doc. 6).

17. Plaintiff personally served Defendant Michelle L. Mackey with a copy of the Summons and Complaint on April 9, 2020. (Doc. 7).

18. Plaintiff served Defendant Thayne Mackey, Inc. with a copy of the Summons and Complaint on April 9, 2020, via Thayne Mackey, Inc.'s registered agent Thayne Mackey. (Doc. 8).

19. Plaintiff personally served Defendant Thayne A. Mackey with a copy of the Summons and Complaint on April 9, 2020. (Doc. 9).

20. None of the Defendants have appeared, answered or otherwise responded to the Complaint.

21. The Clerk of Court entered a Default Certificate with respect to all of the Defendants on June 9, 2020. (Doc. 12).

CONCLUSIONS OF LAW

22. Plaintiff is entitled to judgment against Defendant Brookside in the amount of \$838,055.02, with additional interest of \$99.54 per day from July 21, 2020, until the date of judgment. Plaintiff is also entitled to post-judgment interest, costs and fees against Defendant Brookside as allowed under the loan documents.

23. Plaintiff is entitled to judgment against Defendants Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L. Mackey in the amount of \$838,055.02, with additional interest of \$99.54 per day from July 21, 2020 until the date of judgment. Plaintiff is also entitled to post-judgment interest, costs and fees against Defendants Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey, and Michelle L. Mackey as allowed under the loan documents.

24. Plaintiff is entitled to an order of sale of the real property and Personal Property Collateral described herein.

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for Entry of Default Judgment (Doc. 13) is GRANTED.

2. Plaintiff shall have judgment against Defendant Brookside in the amount of \$838,055.02, with additional interest of \$99.54 per day from July 21, 2020, until the date of judgment, plus post-judgment interest, costs and attorneys' fees as allowed under the loan documents.

3. Plaintiff shall have judgment against Defendants Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L. Mackey in the amount of \$838,055.02, with additional interest of \$99.54 per day from July 21, 2020 until the date of judgment, plus post-judgment interest, costs and attorneys' fees as allowed under the loan documents.

4. Plaintiff is granted judgment foreclosing out the liens, claims and interests of all Defendants in the 47466 Property, as well as the liens, claims and interests of all other persons or entities in the 47466 Property recorded after the recording of the 47466 Lis Pendens in Phillips County, Montana on April 7, 2020.

5. Within 10 days of the entry of this judgment, Defendants Brookside, Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L. Mackey shall provide Plaintiff with:

- a. Evidence of insurance on the 47466 Property; and
- b. Access to the 47466 Property to conduct an appraisal and inspection of the 47466 Property.

6. The 47466 Property may be sold as provided by law to satisfy this judgment.

7. Plaintiff is granted judgment foreclosing out the liens, claims and interests of all Defendants in the 47464 Property, as well as the liens, claims and interests of all other persons or entities in the 47464 Property recorded after the recording of the 47464 Lis Pendens in Phillips county, Montana, on April 7, 2020.

8. Within 10 days of the entry of this judgment, Defendants Brookside, Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L. Mackey shall provide Plaintiff with:

- a. Evidence of insurance on the 47464 Property; and
- b. Access to the 47464 Property to conduct an appraisal and inspection of the 47464 Property.

9. The 47464 Property may be sold as provided by law to satisfy this judgment.

10. Plaintiff is granted judgment foreclosing out the liens, claims and interests of all Defendants in the 3493 Property, as well as the liens, claims and interests of all other persons or entities in the 3493 Property recorded after the recording of the 3493 Lis Pendens in Phillips County, Montana on April 7, 2020.

11. Within 10 days of the entry of this judgment, Defendants Brookside,

Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L.

Mackey shall provide Plaintiff with:

- a. Evidence of insurance on the 3493 Property; and
- b. Access to the 3493 Property to conduct an appraisal and inspection of the 3493 Property.

12. The 3493 Property may be sold as provided by law to satisfy this judgment.

13. Plaintiff is granted judgment foreclosing out the liens, claims and interests of Defendants Brookside, Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L. Mackey in the Personal Property Collateral, as well as the liens, claims and interests of all other persons or entities in the Personal Property Collateral recorded after the recording of Plaintiff's UCC-1 Financing Statement with Montana's Secretary of State on August 27, 2013.

14. The Personal Property Collateral may be sold as provided by law to satisfy this judgment.

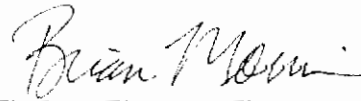
15. Plaintiff may (but is not required to) credit bid at the sale of the 47466 Property, the 47464 Property, the 3493 Property and the Personal Property Collateral in any amount up to the debt amount.

16. In the event there is a deficiency after applying the proceeds of the

judicial foreclosure sale(s) described herein, Plaintiff is granted a deficiency judgment, jointly and severally, against Defendants Brookside, Thayne Mackey, Inc., Michelle Mackey, Inc., Thayne A. Mackey and Michelle L. Mackey.

17. The Judgment entered herein shall be augmented by any and all additional interest, costs and attorneys' fees allowed under the loan documents, with such amounts to be established by affidavit.

DATED this 6th day of October, 2020.

A handwritten signature in cursive script, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court